IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No.441 of 2007.

Judgment Reserved on:13.11.2007

Date of decision: 14th December, 2007.

Chairman-cum-Managing Director,….Appellant-Defendant H.P.Ex.-Servicemen Corporation.

Versus

Ram Singh & Others ….Respondent-Plaintiff

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellants: **Mr.Bhuvnesh Sharma, Advocate.**

For the Respondent-1: **Mr.Rakesh Jaswal, Advocate.**

Dev Darshan Sud,J.

This is defendant's appeal against the judgment and order of the learned District Judge, Bilsapur, passed on 29.9.2007 and 26.10.2007 in CMP No.382 of 2007 under Order 39 Rule 1 and 2 of the Code of Civil Procedure, granting interim relief to the plaintiff as prayed therein.

The plaintiff had instituted a suit for damages, declaration and permanent prohibitory injunction against the appellant-defendant on the allegations as made in the plaint. The suit was contested on a number of grounds. An application under Order 39 Rule 1 and 2 of the Code of Civil Procedure

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

was instituted by the plaintiff-respondent with a prayer that during the pendency of the suit, the defendants be prohibited and restrained from plying a vehicle No.HP-24-4471, which according to the plaintiff belongs to them and operation of Bank Account No.0175099 with the Punjab National Bank, Barmana. The averments made in the application were brief and terse. This application was resisted by the defendants on a number of grounds including maintainability and the allegation that the plaintiff was suppressing material facts and the plaintiff had not approached the Court with clean hands etc.

The suit instituted by the plaintiff prayed for a decree for damages to the extent of Rs.8,00,000/-, a declaration that only the plaintiff is entitled to deal with or engage individual truck operator etc. and that the defendants had no such power; a decree declaring the plaintiff as the elected representative of the H.P. Ex-Servicemen Truck Operators Union with a further entitlement of the collection of the *"Parchi Fee"* or Union fund to utilize the same for the purpose of Union etc., a declaration that the plaintiff being the elected representative of the H.P. Ex-Servicemen Truck Operators Union is entitled to operate, manage and control the bank account, subject matter of the suit and the said application, and that further the plaintiff is entitled to control, manage and use of

the motor vehicle and all the property of the Union. A decree in the nature of injunction prohibiting the defendant from collecting *"Parchi Fee"*, using the bank account and the vehicle is also prayed for. It must be noticed that an alternate decree was prayed for and that was that *"in case the defendants succeeds in their illegal designs to use/misuse the Union fund deposited with Punjab National Bank at Barmana in Account No.0175099 during the pendency of this suit, in that eventuality they be directed to submit the details of collection made and expenditure done so far incurred".* It is needless to add that the suit was contested on a number of grounds including its maintainability etc. These facts are being noticed here since the interim order, which has been passed, is very prolix.

In CMPMO No.232 of 2007, titled: Chairman-cum-Managing Director, H.P. Ex-Servicemen Corporation, Hamirpur vs. Ram Singh and Others, decided on 11.10.2007, passed by this Court in a challenge made to an order which is the subject matter of this petition, this Court had directed that:-

> *"1. The written statement and the reply to the temporary injunction application shall be prepared and made ready by the petitioner herein in four days from today. Advance copies thereof shall be given to Mr.Jaswal during the same period, who may file the replication/rejoinder thereto, if*

> *any, in three days thereafter with advance copies in the same period to Mr.Bhuvnesh Sharma.*
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> *2. The matter shall be listed before the learned Court below on 23rd October, 2007. On that day, based upon the aforesaid pleadings in the suit as well as the temporary injunction application, the learned Court below shall proceed to dispose of the temporary injunction application itself finally. If for any reason, the said application cannot be disposed of on 23rd October, 2007, it shall be taken up on the next day and likewise day after etc. till its disposal. In any event, the matter shall be taken up on every day until the temporary injunction application is finally disposed of".*

I have heard learned counsel for the parties and have gone through the record of the case.

The direction for granting interim relief or measures merely because a prima facie case exists without considering the entirety of the case as to whether the balance of convenience is in favour of the party praying for injunction, irreparable loss and injury occasioned to be suffered in case interim relief is not allowed has been deprecated by the Courts on more than one occasion. It is by now well settled that relief which is sought for in any proceedings, which is the subject matter of trial,

cannot be granted as a matter of course as an interim measure.

The pleadings on record in the present case would go to show that a number of contentious issues have been raised. The plaintiff claiming declaratory decree and as a consequence authority to operate the bank account, collect *"Parchi Fee"* and utilize the assets of the Union without determining as to whether the plaintiff is in-fact entitled to these reliefs, grant of interim measure would practically allow the entire suit. In case the Court felt that there was need to protect the assets it could have monitored the use and operation of the bank account as also the assets of the Union. I have already observed that a lengthy order having been passed noticing detailed submissions which would be relevant more for the purposes of disposal of the entire suit rather than the interim relief, the District Judge was in clear error in allowing the application as prayed for. The order passed by the trial Court, after noticing the contentious issues raised by the parties, merely confirms the ad-interim injunction issued by it on 29.7.2007. This was not the proper manner in dealing with injunction application. The fact as to whether there is a prima facie case, balance of convenience and irreparable loss had to be considered by the Court. These are not mere expressions or terms but are now very well defined in law. The injunction

order passed by the trial Court cannot be sustained. The Court should have focused attention on the fact that there was a need to monitor the working of the defendants by ad-interim directions. In the facts and circumstances of the case, the order passed by the trial Court is quashed and set aside and a direction is issued in the following terms:-

(a) That the defendant will be allowed the operation of the bank account which will be monitored by the trial Court and for which purpose, the defendant shall submit in the court an account of the money received/utilized. This account shall be submitted every 15 days. The money will be utilized for the purpose of the Union and the defendant will not indulge in wasteful expenditure.

(b) The defendant will be allowed to use the vehicle which will also be monitored by the trial Court and for which purpose the defendant will submit a report every month showing the purpose and manner for which the vehicle was utilized and the manner of its utilization.

This appeal is accordingly disposed of with these directions. There shall be no order as to costs. All the miscellaneous applications are disposed of.

December 14, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**